

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
ATTENTION OF THE SECRETARY

In the Matter of)

)
Declaratory Ruling Regarding the Use of)
Section 252(i) To Opt Into Provisions)
Containing Non-Cost-Based Rates)

CC Docket No. 99-143

COMMENTS OF BELL ATLANTIC¹

In granting GTE's petition,² the Commission should, as GTE asks, clarify that its rules deny the right of a carrier to "opt into" a provision of an existing interconnection agreement when that provision is not cost-based, even if it was cost-based for the initial carrier at the time it was entered into. However, the Commission should also find, either here or in the pending reciprocal compensation proceeding,³ that section 252(i) of the Act does not apply to inter-carrier compensation in connection with Internet-bound traffic.

The Commission has found that the reciprocal compensation provisions of section 251 of the Act apply only to local traffic. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

² GTE Petition for Declaratory Ruling (filed Apr. 13, 1999) ("Petition").

³ *Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, FCC 99-38 (rel. Feb. 26, 1999) ("Reciprocal Compensation Order").

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1034 (1996). And it has unequivocally found that Internet calls are not local calls, because they do not terminate at an Internet service provider's ("ISP's") point of presence but instead extend into the Internet, which is a world-wide network. Reciprocal Compensation Order at ¶ 18. Section 252 applies only to those provisions of interconnection agreements that implement section 251. Because the only provision of 251 that addresses reciprocal compensation, 251(b)(5), applies only to local traffic, not Internet calls, section 252, including the opt-in provisions of 252(i), are inapplicable to inter-carrier compensation in connection with Internet calls.

Even if section 252(i) applied to inter-carrier compensation in connection with Internet calls, which it does not, the reciprocal compensation rates applicable to local calls are far above the level needed to compensate interconnecting carriers to deliver calls to ISPs. *See* Reply Comments of Bell Atlantic on Notice of Proposed Rulemaking in CC Docket No. 99-68 at 3-7 (filed Apr. 27, 1999) (showing that interconnecting carriers incur few costs to carry traffic to ISPs and that some "carriers" owe their entire existence to receiving compensation from incumbent local exchange carriers for ISP-bound traffic while incurring few costs). But section 252(d)(2)(A)(ii) of the Act requires that reciprocal compensation payments must represent "a reasonable approximation of the additional costs of terminating such calls." In addition, under section 252(d)(2)(A)(i), reciprocal compensation must provide for "mutual and reciprocal recovery" of applicable costs. In the case of Internet calls, all of the traffic – and any compensation – flows from the incumbent local exchange carrier to the interconnecting carrier that delivers the call to the ISP. There is no "mutual recovery" of costs, but only payment of hundreds of millions of dollars from the incumbents to their competitors. As

a result, the Commission should find that the requirements of the Act for reciprocal compensation are inapplicable to Internet calls.⁴

Similarly, the Commission should find that a carrier may not opt into the switching rate provisions of interconnection agreements if that carrier's network configuration makes the level of compensation not cost-based. *See* Petition at 7-9. In particular, if the interconnection agreement specifies the tandem switching rate, and the carrier that wants to opt into that rate does not use a tandem architecture, then the tandem rate is not cost-based for that carrier. As GTE shows (Petition at 8), interconnecting carriers often use a small number of large switches to interconnect directly to their customers at lower cost than if they employed a tandem architecture. For those carriers, the tandem rate is not cost-based, and, under section 1.809(b)(1), those carriers do not have the right to opt into the tandem switching rate in another agreement.

⁴ In some instances, interconnecting carriers claim they should be compensated for the costs they incur to haul traffic from their point of presence outside the caller's local calling area back into that local area to interconnect with an ISP. That ignores the fact that the originating carrier incurs comparable costs to haul the traffic out of the local area to that point of presence. The originating carrier receives no extra payment to bring the traffic to the interconnecting carrier, and there is no reason why it should compensate the latter to bring it back.

Accordingly, the Commission should grant GTE's Petition and find that a carrier cannot opt into a provision in another interconnection agreement under section 252(i) if that provision results in a non-cost-based payment to that carrier. It should also find that 252(i) does not apply at all to compensation for Internet-bound calls.

Respectfully Submitted,

Michael E. Glover
Of Counsel

A handwritten signature in black ink, appearing to read "Lawrence W. Katz", written over a horizontal line.

Lawrence W. Katz
1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201
(703) 974-4862

Attorney for the Bell Atlantic
telephone companies

May 17, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 1999, copies of the forgoing Comments of Bell Atlantic were sent by first class mail, postage prepaid, to the parties on the attached list.

A handwritten signature in cursive script, reading "Jennifer L. Hoh". The signature is written in dark ink and is positioned above a horizontal line.

Jennifer L. Hoh

* Via hand delivery.

Janice Myles*
Federal Communications Commission
445 12th Street, SW
Room 5-C327
Washington, DC 20554

ITS*

Gail L. Polivy
GTE Service Corporation
1850 M Street, NW
Suite 1200
Washington, DC 20036

Gregory J. Vogt
Suzanne Yelen
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Thomas Parker
GTE Service Corporation
600 Hidden Ridge, MS HQ-E03J43
PO Box 152092
Irving, TX 75015-2092